

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON DIVISION

BEN EWING, Individually, and as
Executor/Administrator/Personal
Representative of the Estate of
His Wife, Frances Ewing,

Plaintiff,

v.

CIVIL ACTION NO. 2:15-cv-08661

BOSTON SCIENTIFIC CORP., et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

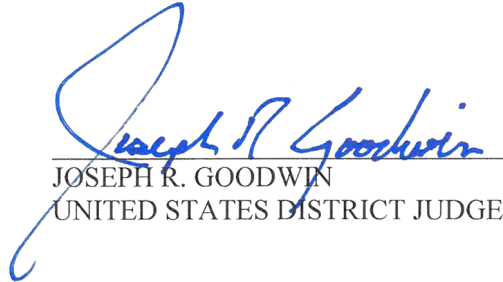
Pending is Defendant Boston Scientific Corporation's Motion to Dismiss with Prejudice based on plaintiff's failure to serve a Plaintiff Fact Sheet pursuant to deadlines and requirements established by the court's previous pretrial order. (ECF No. 16). Plaintiff has not responded to the motion. The court finds, pursuant to Rules 16 and 37 of the Federal Rules of Civil Procedure and after weighing the factors identified in *Wilson v. Volkswagen of Am., Inc.*, 561 F.2d 494, 503-06 (4th Cir. 1977), that Boston Scientific Corporation ("BSC") should be dismissed without prejudice from this case for plaintiff's failure to serve a Plaintiff Fact Sheet in compliance with the court's previous pretrial order.

Therefore, the court **ORDERS** that the motion to dismiss (ECF No. 16) is **GRANTED in part** to the extent BSC seeks dismissal and **DENIED insofar as** BSC

seeks dismissal of the entire case with prejudice. The court **ORDERS** that BSC is dismissed from this case without prejudice. One defendant remains.

The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: October 28, 2020



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE